

REMARKS

Claims 1-42 are pending in the application. It is gratefully acknowledged that Claims 28, 41 and 42 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner has objected to Claims 3, 6, 10, 13, 21, 24, 27, 32 and 35 because of informalities. The Examiner has rejected Claims 1, 4, 8, 11, 15, 16 and 18 under 35 U.S.C. §102(e) as being anticipated by Esteves et al. (U.S. Patent 6,205,129). The Examiner has rejected Claims 7, 14, 17, 19, 22, 25, 29, 30, 33, 36, 37 and 40 under 35 U.S.C. §103(a) as being unpatentable over Esteves et al. in view of Proposed HDR Standard (3GPP2-C00-20000327). The Examiner has rejected Claims 2, 5, 9, 12, 20, 23, 26, 31, 34 and 38 under 35 U.S.C. §103(a) as being unpatentable over Wada (U.S. Patent 5,689,503). The Examiner has rejected Claims 3, 6, 10, 13, 21, 24, 27, 32, 35 and 39 under 35 U.S.C. §103(a) as being unpatentable over Esteves et al. in view of Wado, and further in view of Proposed HDR Standard.

Please cancel Claims 40-42 without prejudice. Please amend Claims 11, 22, 25, 30, 33 and 37 as set forth herein. No new matter has been added.

Initially, please note that a few minor amendments have been made to Claims 11, 22, 25, 30 and 33 to more clearly define some of the elements of the claims. Also, Claim 37 has been amended to correct an antecedent basis error.

Regarding the objections to Claims 3, 6, 10, 13, 21, 24, 27, 32 and 35 because of informalities, the Examiner states that “at least one slot” is not properly further limited by “wherein the at least one predetermined slot are the first two slots from the last slot and the last slot.” In response thereto, the following is respectfully submitted. Use of the phrase “at least one” means that there could be only one or more than one. See *Kistler Instrumente AG v. United States*, 628 F.2d 1303, 1318, 211 USPQ 920 (Ct. Cl. 1980) (“Anyone with even the most rudimentary understanding of the English language understands ‘at least one piezo-electric crystal means lodged within said component means,’ to mean one or more crystals.”). It is the

function of a dependent claim to further limit its independent claim. Therefore, since “at least one” is one or more than one, and “3” further limits “at least one”, the claim language is indeed proper. Based on at least the foregoing, withdrawal of the objections to Claims 3, 6, 10, 13, 21, 24, 27, 32 and 35 is respectfully requested.

Regarding the rejection of independent Claims 1, 4, 8, 11 and 15 under §102(e), the Examiner states that Esteves et al. anticipates all of the elements of the claims. Esteves et al. discloses a method and apparatus for variable and fixed forward link rate control in a mobile radio communications system. Each of Claims 1, 4, 8, 11 and 15 recites “a data rate control (DRC) request indicator (DRI) bit”. The Examiner maintains that the “balanced state bit” of Esteves et al. is equivalent to the DRI bit of the present application.

The DRI bit of the claims of the present application is a bit used to request data rate control. The Examiner quotes the Specification at page 8, lines 16-23, wherein it states, “The DRI bit indicates whether DRC information is needed for scheduling after a predetermined slot period.” The DRI bit is used to selectively provide DRC information.

Esteves et al. defines the “balanced state bit” at col. 4, lines 37-42, “if the base station is able to reliably receive DRC messages from the mobile station on the data rate control channel, the base station sends a balanced state bit (i.e., the bit is set to 0 or 1) to the mobile station indicating that the base station is reliably receiving the DRC messages.”

The DRI bit of the present application indicates if the DRC message is required; the balanced state bit of Esteves et al. indicates if the DRC information is being received. Indicating if information is received cannot be equated with indicating if information is needed. Clearly, the “balance state bit” cannot anticipate the DRI bit.

Based on at least the foregoing, withdrawal of the rejection of independent Claims 1, 4, 8, 11 and 15 under §102(e) is respectfully requested.

Regarding the rejection of Claims 22 and 25 under §103(a), the Examiner states that Esteves et al. in view of the Proposed HDR Standard renders the claims unpatentable. The Examiner states that Esteves et al. discloses detecting ATs of the first group by multiplying a received preamble by a plurality of predetermined orthogonal codes assigned to the plurality of ATs as recited in Claims 22 and 25. The plurality of ATs recited in the claims are divided into two groups: a first AT group that includes at least one AT for receiving the packet data for the first transmission period and a second AT group that does not receive the packet data for the first transmission period and is to receive packet data for a second transmission period after the first transmission period. The process of detecting by an AT the ATs of the first group of Claims 22 and 25 enables an AT to selectively schedule the DRC channel. For example, as disclosed in the Specification at page 14, if each AT also searches for the preambles of the other ATs, the searching AT can find out how long the current forward packet is. Thus, the AT does not transmit its DRC channel until scheduling is needed. That is, each AT checks whether its DRC channel is to be transmitted and as a result, it transmits the DRC channel only in time for scheduling. The DRC channel transmission is controlled in this manner. Esteves et al. does not have two groups of ATs, and does not detect the ATs of the first group, as recited in Claims 22 and 25. The Proposed HDR Standard does not cure this defect. Based on at least the foregoing, withdrawal of the rejection of Claims 22 and 25 under §103(a) is respectfully requested.

Regarding the rejection of independent Claims 22, 25, 30, 33 and 37 under §103(a), the Examiner states that Esteves et al. in view of the Proposed HDR Standard renders the claims unpatentable. Each of independent Claims 22, 25, 30, 33 and 37 recite, in one form or another, that a last slot is determined, and that the DRC information is generated in at least one predetermined slot before the last slot and transmitting the DRC information to the AN, said at least one predetermined slot located after the packet data of the first transmission period. This process results in the DRC information being transmitted in the first transmission period, between the packet data and the last slot. Esteves et al. is cited as disclosing this element.

Esteves et al. monitors each time slot; Esteves does not determine (or check for) the last time slot. Esteves et al. does not transmit the DRC information between the packet data and the

last slot of the first transmission period. The Proposed HDR Standard does not cure this defect.

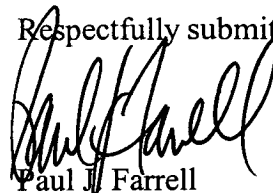
Based on at least the foregoing, withdrawal of the rejection of independent Claims 22, 25, 30, 33 and 37 under §103(a) is respectfully requested.

Regarding the rejection of independent Claim 40 under §103(a), Claim 40 has been cancelled, and therefore the rejection is moot.

Independent Claims 1, 4, 8, 11, 15, 22, 25, 30, 33 and 37 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2, 3, 5-7, 9, 10, 12-14, 16-21, 23, 24, 26, 27-29, 31, 32, 34-36, 38 and 39, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2, 3, 5-7, 9, 10, 12-14, 16-21, 23, 24, 26, 27-29, 31, 32, 34-36, 38 and 39 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-39, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicant's attorney at the number given below.

Respectfully submitted,



Paul J. Farrell

Reg. No. 33,494

Attorney for Applicant

DILWORTH & BARRESE
333 Earle Ovington Blvd.
Uniondale, New York 11553
Tel: (516) 228-8484
Fax: (516) 228-8516

PJF/MJM/dr